

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

JAN 18 2005

ROBERT H. SHERWELL, CLERK
BY _____ DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDDIE FERRAND, Individually
and d/b/a/ MR. ED'S TAX SERVICE,
GLENDA FAYE ELLIOTT,
MICHAEL DWAYNE BELL,
WILLIAM NATHANIEL KENNEDY, and
JHACOBY LaKELSEY TOSTON,

Defendants.

CIVIL ACTION NO.

CV05-0069 M

**JUDGE JAMES
MAGISTRATE JUDGE KIRK**

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff United States of America in its complaint against defendants Eddie Ferrand, individually and d/b/a Mr. Ed's Tax Service, Glenda Faye Elliott, Michael Dwayne Bell, William Nathaniel Kennedy, and Jhacoby LaKelsey Toston states as follows:

NATURE OF COMPLAINT

1. This is a civil action brought by the United States of America: (a) to enjoin defendant Eddie Ferrand, individually and d/b/a Mr. Ed's Tax Service, from:
 - i. Preparing or assisting in the preparation of any federal income tax return for any other person or entity;
 - ii. Providing any tax advice or services for compensation, including preparing returns, providing consultative services or representation of customers;
 - iii. Engaging in conduct subject to penalty under 26 U.S.C. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position or preparing a return or claim for refund that willfully or recklessly understates a tax liability;

- iv. Misrepresenting his qualifications and experience as an income tax return preparer; and
- v. Engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws through the preparation of false tax returns;

and (b) to enjoin defendants Glenda Faye Elliott, Michael Dwayne Bell, William Nathaniel Kennedy, and Jhacoby LaKelsey Toston from:

- i. Preparing or assisting in the preparation of any federal income tax return for any other person or entity;
- ii. Providing any tax advice or services for compensation, including preparing returns, providing consultative services or representation of customers;
- iii. Engaging in conduct subject to penalty under 26 U.S.C. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position or preparing a return or claim for refund that willfully or recklessly understates a tax liability; and
- iv. Engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws through the preparation of false tax returns.

AUTHORIZATION

2. This action has been authorized by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of the Attorney General of the United States, pursuant to the provisions of 26 U.S.C. §§ 7401, 7402 and 7407.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. § 7402.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396, and 26 U.S.C. § 7407.

DEFENDANTS

5. Eddie Ferrand resides at 2411 Desiard Street, Monroe, Louisiana 71201. Ferrand operates Mr. Ed's Tax Service, an unincorporated business, from that same address and from 1905 Roselawn Avenue, Suite A, Monroe, Louisiana 71201.

6. Glenda Faye Elliott resides at 33 Magnolia Drive, Monroe, Louisiana 71203.

7. Michael Dwayne Bell resides at 207 Fairfield Street, West Monroe, Louisiana 71291.

8. William Nathaniel Kennedy resides at 110 Alabama Street, Rayville, Louisiana 71269.

9. Jhacoby LaKelsey Toston resides at 320 Nevada Drive, Monroe, Louisiana 71202.

DEFENDANTS' FRAUDULENT TAX PREPARATION SCHEME

10. Eddie Ferrand, doing business as Mr. Ed's Tax Service, has been preparing federal income tax returns since at least 1997.

11. Glenda Faye Elliott worked for Eddie Ferrand as a tax return preparer at Mr. Ed's Tax Service starting in 1997. In 2002, Elliott opened her own tax return preparation business, known as F&F Tax Service, at 1905 Roselawn Avenue, Suite B, Monroe, Louisiana 71201.

12. Michael Dwayne Bell worked for Eddie Ferrand as a tax return preparer at Mr. Ed's Tax Service from late 2000 through the middle of February, 2001. Bell began his own tax return preparation business in late 2001.

13. William Nathaniel Kennedy worked for Eddie Ferrand at Mr. Ed's Tax Service starting in 1999, but did not begin working as a tax return preparer there until November, 2001. As of May, 2002, Kennedy was the manager at Mr. Ed's Tax Service's Desiard Street location.

14. Jhacoby LaKelsey Toston worked for Eddie Ferrand as a tax return preparer at Mr. Ed's Tax Service from January through April 15, 2001, and again in 2002. Toston began his own tax return preparation business in September, 2002.

15. The defendants achieve unlawful refunds for their customers by fraudulently deducting from their customers' taxable income (a) fictitious or inflated deductions reported on Schedule A; and/or (b) fictitious self-employment business losses reported on Schedule C.

16. Examples of fraudulent items that the defendants place on Schedule A of customers' federal income tax returns include:

- a. Fictitious or inflated medical and/or dental expenses;
- b. Fictitious or inflated charitable contributions;
- c. Fictitious or inflated unreimbursed employee business expenses; and
- d. Fictitious or inflated "miscellaneous" deductions.

17. The defendants fabricate deduction amounts for which their customers have no, or only partial, substantiation.

18. With respect to items reported on Schedule C, the defendants report fictitious business losses and fabricate business expenses for businesses that their customers do not operate, which the defendants fraudulently deduct from their customers' taxable incomes.

19. Eddie Ferrand misleads his customers into believing that he is a former IRS employee with special knowledge of tax laws that is not readily available to the general public.

20. At their own tax preparation businesses, the defendants Glenda Faye Elliott, Michael Dwayne Bell, and Jhacoby LaKelsey Toston continue to prepare returns, a vast majority of which claim refunds from the IRS.

21. The defendants are income tax return preparers within the meaning of I.R.C. § 7701(a)(36).

DEFENDANTS' KNOWLEDGE OF THE ILLEGALITY OF THEIR SCHEME

22. The defendants know or should know that their scheme is illegal.

23. Even a cursory review of applicable internal revenue law would reveal (a) that taxpayers who claim income tax deductions must actually have incurred the expenses that give rise to the deductions; (b) that taxpayers who claim business losses must actually have operated a business and that they incurred those losses; and (c) that taxpayers must substantiate all income tax deductions and business losses.

24. The defendants have willfully understated their customers' federal income tax liabilities on returns and amended returns that the defendants have prepared.

25. The defendants have prepared fraudulent tax returns for customers in reckless or intentional disregard of the applicable internal revenue laws.

HARM TO THE UNITED STATES

26. The defendants prepared at least 6,811 original tax returns that were processed by the IRS in 2000 and 2001. Of that total, 2,386 returns were processed in 2000, and 4,425 returns were processed in 2001.

27. The IRS has examined at least 53 of those returns. The average audit adjustment for the 53 examined federal income tax returns resulted in increased tax owed of \$6,685.00 per

return. Assuming that examination of all returns that the defendants prepared would yield similar increases in tax, the understated tax liability resulting from the defendant's acts for the 6,811 original returns that were processed in 2000 and 2001 would result in a tax loss of \$45,531,535.00.

28. In addition to the 6,811 returns described above, the defendants also prepared amended federal income tax returns for customers. The IRS has examined at least 79 of those amended returns. The average audit adjustment for the 79 examined amended federal income tax returns resulted in increased tax owed of \$5,075.00 per return.

29. The IRS does not know exactly how many amended returns the defendants have prepared. Of the customers whose original returns were audited, most had at least two and sometimes three amended returns prepared by the defendants for prior tax years.

30. The estimated harm to the United States of \$45,531,535.00 is conservative because it does not include any of the amended returns that the defendants prepared for their customers.

31. On information and belief, the defendants continued to prepare federal income tax returns for the 2002, 2003 and 2004 filing seasons.

COUNT I: INJUNCTION UNDER § 7407

32. The United States incorporates by reference the allegations contained in paragraphs 1 through 31 above.

33. Section 7407 of the Internal Revenue Code authorizes a district court, inter alia, to enjoin an income tax return preparer (a) from engaging in conduct subject to penalty under I.R.C. § 6694, which penalizes a return preparer who knowingly prepares a return that contains an

unrealistic position, who willfully attempts to understate tax liability on a return that he prepares, or who prepares a return that understates tax liability as a result of his reckless or intentional disregard of rules or regulations; (b) from misrepresenting his experience or education as an income tax return preparer; or (c) from engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

34. The defendants have engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing original and amended income tax returns based on unsubstantiated and fraudulent deductions and business losses. The defendants know or should know that those positions do not have a realistic possibility of being sustained on the merits if questioned by the Internal Revenue Service.

35. The defendant Eddie Ferrand has engaged in additional conduct subject to penalty under 26 U.S.C. § 6694 by misrepresenting his qualifications and experience as an income tax return preparer.

36. The defendants have engaged in fraudulent and deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

37. The defendants' actions described above fall within 26 U.S.C. §§ 7407(b)(1) and thus are subject to injunction under § 7407.

38. Because of the defendants' continual and repeated conduct subject to injunction under 26 U.S.C. § 7407, they should be permanently enjoined from acting as income tax return preparers.

COUNT II: INJUNCTION UNDER 26 U.S.C. § 7402

39. The United States incorporates herein by reference the allegations in paragraphs 1 through 38 above.

40. Section 7402(a) of the Internal Revenue Code authorizes a district court to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws.

41. The defendants, through the conduct described above, have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws. Unless enjoined by this Court, they are likely to continue to engage in such conduct. Their conduct causes significant injury to the United States. The United States is entitled to injunctive relief under 26 U.S.C. § 7402(a) to prevent such conduct.

APPROPRIATENESS OF INJUNCTIVE RELIEF

42. Unless enjoined, the defendants are likely to continue to engage in the conduct described above.

43. The defendants' conduct, as described above, causes irreparable harm to the United States. Specifically, the defendants' conduct is causing and will continue to cause substantial revenue losses to the United States Treasury, some of which may never be recovered, thus resulting in a permanent loss. Unless the defendants are enjoined, the IRS will have to devote substantial amounts of its limited resources to detecting and auditing future fraudulent returns prepared by the defendants, thereby reducing the level of service that the IRS can give honest taxpayers.

44. If the defendants are not enjoined, they likely will continue to engage in conduct subject to penalty under 26 U.S.C. § 6694.

45. If the defendants are not enjoined, they likely will continue to engage in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

WHEREFORE, plaintiff United States of America prays for the following relief:

A. That the Court find that defendants Eddie Ferrand, individually and d/b/a Mr. Ed's Tax Service, Glenda Faye Elliott, Michael Dwayne Bell, William Nathaniel Kennedy, and Jhacoby LaKelsey Toston continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694, or otherwise engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against them is appropriate pursuant to 26 U.S.C. §§ 7402(a) and 7407 to prevent recurrence of that conduct;

B. That the Court, pursuant to 26 U.S.C. § 7407, enter a permanent injunction prohibiting defendant Eddie Ferrand, individually and d/b/a Mr. Ed's Tax Service, from directly or indirectly:

1. Preparing or assisting in the preparation of any federal income tax return for any other person or entity;
2. Providing any tax advice or services for compensation, including preparing returns, providing consultative services or representation of customers;
3. Engaging in conduct subject to penalty under 26 U.S.C. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position or preparing a return or claim for refund that willfully or recklessly understates a tax liability;
4. Misrepresenting his qualifications and experience as an income tax return preparer; and

5. Engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws through the preparation of false tax returns.

C. That the Court, pursuant to 26 U.S.C. § 7407, enter a permanent injunction prohibiting defendants Glenda Faye Elliott, Michael Dwayne Bell, William Nathaniel Kennedy, and Jhacoby LaKelsey Toston from:

1. Preparing or assisting in the preparation of any federal income tax return for any other person or entity;
2. Providing any tax advice or services for compensation, including preparing returns, providing consultative services or representation of customers;
3. Engaging in conduct subject to penalty under 26 U.S.C. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position or preparing a return or claim for refund that willfully or recklessly understates a tax liability; and
4. Engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws through the preparation of false tax returns.

D. That the Court, pursuant to 26 U.S.C. § 7402, enter an injunction:

1. Requiring each of the defendants, at their own expense, to send by certified mail, return receipt requested, a copy of the final injunction entered against them in this action to each person for whom he or she, or anyone at his or her direction or in his or her employ, prepared federal income tax returns or any other federal tax forms after January 1, 1999;
2. Requiring each of the defendants, within forty-five days of entry of the final injunction in this action, to file a sworn statement with the Court evidencing his or her compliance with the customer notification requirement; and
3. Requiring each of the defendants to keep records of his or her compliance with this provision, which may be produced to the Court, if requested, or to the United States pursuant to paragraph F, below;

E. That the Court, pursuant to 26 U.S.C. §§ 7402 and 7407, enter an injunction:

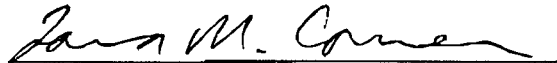
1. Requiring each of the defendants, and anyone who prepared tax returns at the direction of or in the employ of the defendants, to turn over to the United States copies of all returns or claims for refund that they prepared for customers after January 1, 1999;
2. Requiring each of the defendants, and anyone who prepared tax returns at the direction of or in the employ of the defendants, to turn over to the United States a list with the name, address, telephone number, e-mail address (if known), and social security number or other taxpayer identification number of all customers for whom they prepared returns or claims for refund after January 1, 1999; and
3. Requiring each of the defendants, within forty-five days of entry of the final injunction in this action, to file a sworn statement with the Court evidencing his or her compliance with the foregoing directive;

F. That the Court enter an order allowing the United States to monitor the defendants' compliance with this injunction, and to engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure; and

G. That the Court grant the United States such other and further relief as the Court deems appropriate.

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